

Exhibit A

HC-001

Name: Michael Cavness AN-5878Address: CSP - San QuentinGeneral DeliverySan Quentin, CA 94974CDC or ID Number: AN-5878SUPERIOR COURT, STATE OF CALIFORNIA
County of San Francisco.

(Court).

<u>Michael Cavness</u> Petitioner vs. <u>People of the State of California.</u> Respondent
--

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2018). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

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This petition concerns:

- ☐ A conviction
 ☐ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☒ Other (specify): restitution

1. Your name: Michael Cavness
 2. Where are you incarcerated? San Quentin State Prison
 3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

INVOLUNTARY MANSLAUGHTER

- b. Penal or other code sections: PC 192(B)

- c. Name and location of sentencing or committing court:

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN FRANCISCO

- d. Case number: 241211 - 2413057

- e. Date convicted or committed: 1-20-17

- f. Date sentenced: 3-10-17

- g. Length of sentence: 19 YEARS

- h. When do you expect to be released? 2025

- i. Were you represented by counsel in the trial court? ☒ Yes ☐ No If yes, state the attorney's name and address:

MICHAEL GAINES 2410 KANSAS ST SF CA 94103

4. What was the LAST plea you entered? (Check one):

☐ Not guilty ☒ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

HC-001

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

See attached brief, pgs. 1-7.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*).

See attached brief, pgs. 1-7.

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal. 4th 464, 474.)

See attached brief, pgs. 1-7.

c. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

See attached brief, pgs. 1-7.

HC-001

7. Ground 2 or Ground _____ (if applicable):

see attached brief, pgs. 1-7.

a. Supporting facts:

see attached brief, pgs. 1-7.

b. Supporting documents:

see attached brief, pgs. 1-7.

c. Supporting cases, rules, or other authority:

see attached brief, pgs. 1-7.

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8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☒ No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

N/A

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No

Attach documents that show you have exhausted your administrative remedies. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)

☐ Yes If yes, continue with number 13. ☒ No If no, skip to number 15.

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- 13 a. (1) Name of court: _____
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

N/A

16. Are you presently represented by counsel? ☐ Yes ☒ No If yes, state the attorney's name and address, if known:

In Pro Per.

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☒ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 3-10-19

Michael Connors
 (SIGNATURE OF PETITIONER)

1 Michael Cavness AN-5878
California State Prison-San Quentin
2 General Delivery
San Quentin, California 94974
3 In Pro Per Petitioner/Defendant
4
5
6
7

8 IN THE SUPERIOR COURT, STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

10 IN RE MICHAEL CAVNESS,
11 Petitioner/Defendant.
12 _____/

CASE NO. 211241/2413057

PETITION FOR WRIT OF HABEAS
CORPUS

13 TO THE SUPERIOR COURT AND TO THE RESPONDENTS.

14 The Petitioner/Defendant, Michael Cavness, proceeding in pro per,
15 in forma pauperis, while incarcerated in a state prison, files the
16 Petition for Writ of Habeas Corpus, and states as follows:

17 INTRODUCTION

18 The Honorable Judge Elizabeth D. Laporte of the Northern District
19 of California, San Francisco Division, has ordered the Defendant to
20 file this Habeas Corpus Petition to the San Francisco Superior Court
21 in order to resolve the matter of the Superior Court's assessment
22 and imposition of restitution in Superior Court Case Nos. 211241 and
23 2413057, before any further federal orders are issued in the Defendant's
24 Northern District of California Federal Case No. 14-cv- 3403-EDL.

25 During the settlement proceedings, the N.D. Cal. court ordered
26 that the civil defendants pay the Defendant \$6,500.00, and to be
27 applied to the Defendant's \$20,934.20 restitution fine. The Defendant
28 ///

1 claimed that he only has a \$640. restitution fine, and that the \$20,934.20
 2 restitution fine order is in error, and that the Defendant was not
 3 provided Due Process by his appearance when the Court had assessed
 4 and imposed that the Defendant's restitution be \$20,934.20.(See exhibit A1-A7).
 5 Therefore, the Federal Court, on February 12, 2019, ordered that the
 6 \$6,500.00 be put into an escrow account until the restitution argument
 7 can be resolved by the sentencing court in regards to the alleged error
 8 in the imposition and assessment of the \$20,934.20 restitution fine.(See
 9 exhibit C1).

10 Defendant is now anticipating the resolution of this alleged restitu-
 11 tion error order of the sentencing court by this Petition for Writ
 12 of Habeas Corpus at hand.

13 STATEMENT OF THE CASE AND THE FACTS

14 On March 10, 2017, during the Defendant's re-sentencing proceedings,
 15 when the Defendant was re-sentenced to a 19-years state prison sentence
 16 for voluntary manslaughter, the trial court assessed, during the senten-
 17 cing hearing, that the Defendant pay a Restitution Fine of \$180 on
 18 each of the first three(3) counts and a \$100 Restitution Fine on the
 19 misdemeanor count all totaling \$640, plus \$30 for Critical Needs Assess-
 20 ment on each count totaling \$120, and \$135 for booking fee, \$150 for
 21 pre-sentence report preparation, all totaling \$1,045.(See Exhibits
 22 A4,lns. 13-18; and Exhibit B2,para.9(a),(d); and para. 13).

23 After the Defendant was escorted out of the courtroom and returned
 24 to the court holding cell, the court reopened the Defendant's sentencing
 25 hearing in error on March 10, 2017, while the Defendant was absent,
 26 and the court went back on record in error and imposed a restitution
 27 fine amount of \$20,934.20 to the Victims Compensation Board, and a
 28 \$160 court operations assessment.(See exhibits A1-A7).

1 The Defendant was not present in order to demonstrate to the court
 2 the Defendant's inability to pay the \$20,934.20 restitution fine and
 3 \$160 assessment amount.

4 The court erred in failing to conduct an inability-to-pay hearing
 5 with the Defendant present and in appearance before the court before
 6 imposing the \$20,934.20 restitution fine and \$160 assessment.

7 In 2011, the Defendant had filed a civil complaint against the
 8 San Francisco county's city and county jail in Cavness v. Mirkarimi, No
 9 14-cv-3403 (N.D. California), and litigated a monetary settlement on
 10 February 12, 2019. (See exhibits C1).

11 During the settlement proceedings, the N.D. Cal. court ordered
 12 that the civil defendants pay the Defendant \$6,500.00, and to be
 13 applied to the Defendant's \$20,934.20 restitution fine. The Defendant
 14 claimed that he only has a \$640. restitution fine, and fees and the \$20,934.20
 15 restitution fine order is in error, and that the Defendant was not
 16 provided Due Process by his appearance when the Court had assessed \$160
 17 and imposed that the Defendant's restitution be \$20,934.20. (See exhibit A4).
 18 Therefore, the Federal Court, on February 12, 2019, ordered that the
 19 \$6,500.00 be put into an escrow account until the restitution argument
 20 can be resolved by the sentencing court in regards to the alleged error
 21 in the imposition of the \$20,934.20 restitution fine and \$160 asses-
 22 sment. (See exhibits A4;

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 APPLICABLE LAW

26 Section 1202.4 provides, in part:

27 "... (1) The defendant has the right to a hearing before a judge
 28 to dispute the determination of the amount of restitution. The
 court may modify the amount." P.C. §1202.4

1 P.C. §1202.41 Amendment of restitution order-Physical presence,
 2 provides: "(c)(3) Nothing in this subdivision shall be construed
 3 to prohibit the physical presence of the defendant with counsel."
 4 P.C. §1202.41(c)(3).

5 "A defendant has the right to be heard at the imposition of resti-
 6 tution." P.C. §1203(d).

7 "The court must give defendant meaningful opportunity to contest
 8 restitution amount. The Supreme Court held that an increase in penal-
 9 ties for a crime must be submitted to a jury." U.S. v. Green, (9th
 10 Cir. 2013), 722 F. 3d 1146(defendant's right to be present).

11 LAW AND ARGUMENT

I.

12 TRIAL COURT ERRED BY IMPOSING A \$20,934.20
 13 RESTITUTION FINE AND \$160 COURT OPERATIONS
 14 ASSESSMENT UPON THE DEFENDANT WITHOUT THE
APPEARANCE OF THE DEFENDANT AT THE HEARING

15 The \$20,934.20 restitution fine and \$160 court operations assessment
 16 were unauthorized because they were not a part of the sentencing hearing
 17 on the Defendant's plea bargain because the sentencing hearing was
 18 over with and completed when the trial court went back on the record
 19 to impose the \$20,934.20 restitution fine and the \$160 court assessment
 20 while the Defendant was not present at the imposition of these erroneous
 21 restitution fine and court assessment.

22 "A defendant cannot be sentenced to a punishment more severe than
 23 that specified in the plea bargain." P.C. §1195.

24 The Defendant was not given a chance to waive the issue of the
 25 court's failure to have the Defendant in appearance during the imposition
 26 of the \$20,934.20 restitution fine and \$160 Court op. assessment.

27 ///

28 ///

1 The Defendant was not given the opportunity to timely object to
2 the court's \$20,934.20 restitution fine and \$160 assessment because
3 1) the Defendant was not at the hearing when the trial court imposed
4 the \$20,934.20 restitution fine and \$160 court assessment; and 2) the
5 Defendant never received the court's transcripts of the hearing on
6 the trial court's imposition of the \$20,934.20 restitution fine and
7 \$160 assessment. Thus, the trial court made no mention of any \$20,934.20
8 restitution fine or \$160 court assessment to the Defendant, and the
9 Defendant was not aware of these restitution fine and court assessments
10 that the trial court had imposed upon the Defendant during the hearing
11 nor after the hearing outside the presence of the Defendant, and the
12 Defendant was completely unaware. And therefore, the Defendant was
13 not given the right and opportunity to object to the extremely excessively
14 high \$20,934.20 restitution fine amount or the \$160 court assessment
15 that was erroneously imposed upon the Defendant while the Defendant
16 was absent from the hearing and not in appearance at the hearing when
17 this restitution fine and court assessment were erroneously imposed
18 upon the Defendant.

19 The Defendant was not given the opportunity or right to dispute
20 the trial court's determination of the \$20,934.20 restitution fine
21 amount or \$160 court assessment amount when the Defendant was not
22 in appearance during the imposition of this restitution and assessment
23 amount.

24 Defendant was not given a chance to cross-examine nor object to
25 restitution nor to prove inaccurate the amount of the \$20,934.20 restitution
26 amount and the \$160 court assessment amount. Evidence Code §813(a)(2)
27 allows the Defendant to present evidence of inability to pay, cross-
28 examine and to object to restitution imposed by the trial court.

1 "A defendant has the right to be heard at the imposition of resti-
2 tution." P.C. §1203(d).

3 Due Process Law requires the trial court to conduct an ability
4 to pay hearing and ascertain a Defendant's present ability to pay
5 before it imposes court facilities and court operations assessments
6 under P.C. §1465.8".

7 "Judicial process must make itself available to the indigent
8 defendant. Defendant must be given a chance to present evidence of
9 indigency." Jameson v. Desta, (2018) 5 Cal. 5th 595.

10 "Defendant has the Due Process right to challenge amount of resti-
11 tution." In re Brittany L, (2002) 99 Cal. App. 4th 1381.

12 "An excessive fine is grossly disproportionate and is cruel
13 and unusual punishment." U.S. v. Ferro, (9th Cir. 2012), 681 F. 3d
14 1105.

15 Therefore, the trial court's imposition of the \$20,934.20 restitution
16 fine and \$160 court operations assessment should be stayed, and the
17 Defendant allowed to pay the \$1,045 restitution and assessments since
18 the Defendant was not given an opportunity nor the rights to be present
19 in court or in appearance before the trial court when the trial court
20 imposed the \$20,934.20 restitution fine amount and the \$160 court
21 assessment amount.

22 II.

23 TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO OBJECT
24 TO THE \$20,934.20 RESTITUTION AND \$160 ASSES-
25 SMENT ORDER THAT WAS IMPOSED OUTSIDE THE
26 PRESENCE OF THE DEFENDANT

27 After the Defendant had appeared with his attorney Michael J.
28 Gaines within the March 10, 2017 resentencing hearing and was assessed
a total of \$1,045 in restitution fines and assessments, (see Exhibits

1 A1-A7, n. A4, lns. 13-18), and after the Defendant was remanded and
 2 returned to the jail, the trial court judge erroneously returned back
 3 on the record, outside the presence of the Defendant and while the
 4 Defendant was not present in court, and imposed a \$20,934.20 restitution
 5 fine and a \$160 court operations assessment, while the Defendant's
 6 trial counsel erroneously failed to object to the \$20,934.20 fine and
 7 \$160 assessment that were imposed upon the Defendant when the Defendant
 8 was not present in court.

9 The Defendant's counsel erred by failing to object and this constituted
 10 the ineffective assistance of counsel in violation of the California
 11 Constitution and Amendment 5 of the United States Constitution.

12 CONCLUSION

13 Based on the foregoing, the trial court erroneously imposed a
 14 \$20,934.20 fine and \$160 court operations assessment upon the Defendant
 15 without the appearance of the Defendant in the trial court at the hearing,
 16 and the Defendant had the ineffective assistance of counsel when counsel
 17 failed to object to the restitution fine imposition and court assessment
 18 that were imposed upon the Defendant outside the presence of the Defendant.

19 Wherefore, the Defendant respectfully requests and prays that
 20 the Court grant the Habeas Petition and stay the imposition of the
 21 \$20,934.20 restitution fine and \$160 court operations assessment due
 22 to the Defendant's constitutional rights of appearance being violated.

23 Dated: 3-10-19

Respectfully submitted,

Michael Cavness
 Michael Cavness
 In Pro Per Petitioner

26 DECLARATION

27 I declare under the penalty of perjury that the foregoing is true
 28 and correct.

Dated: 3-10-19

Michael Cavness
 Declarant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

BEFORE THE HONORABLE LORETTA M. GIORGI, JUDGE PRESIDING

DEPARTMENT NUMBER 27

FILED
San Francisco County Superior Court

MAR 13 2017

CLERK OF THE COURT

By: [Signature] Deputy Clerk

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

vs.)

MICHAEL CAVNESS,)

Defendant.)

Court No. 2413057/
Felony Plea**ORIGINAL**Reporter's Transcript of Proceedings

Friday, March 10, 2017

THE ANNEXED INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.
ATTEST: CERTIFIED

JUN 16 2017

APPEARANCES OF COUNSEL:

For Plaintiff:

GEORGE GASCON, District Attorney
850 Bryant Street, Suite 300
San Francisco, California 94103

By: JOHN ULLOM, Assistant District Attorney

CLERK OF THE COURT
Superior Court of California, County of San Francisco
By: [Signature] DEPUTY CLERK

For Defendant:

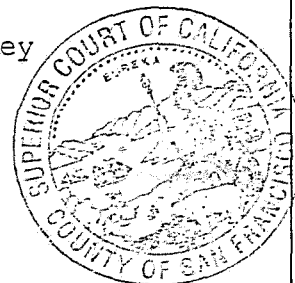
LAW OFFICE OF MICHAEL JOHN GAINES
255 Kansas Street, Suite 340
San Francisco, California 94103-5154
By: MICHAEL GAINES, ESQ.Reported by: Melanie Dawn Gheno, CSR No. 7489, RMR, CRR
Official Court Reporter

Exhibit A1

1 Friday, March 10, 2017 A.M. Session

2 P R O C E E D I N G S

3 THE COURT: Good morning, Mr. Cavness.

4 THE DEFENDANT: Good morning.

5 THE COURT: All right. So we are now on the record in the
6 matter of the People vs. Michael Cavness. Mr. Cavness is
7 present. Counsel, state your appearances.

8 MR. ULLOM: Good morning, your Honor. John Ullom for the
9 People.

10 MR. GAINES: Your Honor, Michael Gaines for Mr. Cavness.
11 Good morning.

12 THE COURT: Good morning. All right. We are here today for
13 sentencing pursuant to both the plea and the original conviction
14 after a jury trial, and I have read and considered both the
15 felony plea that was taken on January 20th of 2017, as well as
16 the calculation of report by the probation department which we
17 have also supplemented with Mr. Cavness' time in custody at
18 San Quentin during appeal.

19 So at this time, do you waive instruction and arraignment
20 for sentencing, Mr. Gaines?

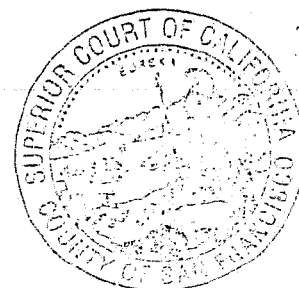
21 MR. GAINES: Yes, your Honor.

22 THE COURT: Is there any legal cause why judgment should not
23 be pronounced?

24 MR. GAINES: No.

25 THE COURT: So Mr. Cavness, it is the judgment of this Court
26 that you be sentenced as follows:

27 As to Count 1, a violation of Section 245(a)1 of the
28 California Penal Code, assault with a deadly weapon on the



A2

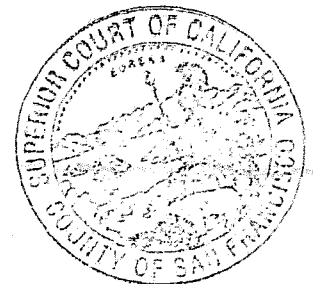
1 person of George Michael Taylor, I sentence you to the
2 aggravated term of four years. That will be double pursuant to
3 667(d)4, a prior strike conviction suffered on the 26th day of
4 May, 1999 in the Superior Court of California for the County of
5 San Francisco, and that was for violation of 136(a)22 of the
6 Penal Code, attempting to dissuade a witness, and that's
7 consecutive. And another consecutive three years on causing
8 great bold injury to Mr. Taylor in commission of the 245(a)1,
9 and that's pursuant to 12022.7(a). I sentence you to an
10 additional three years on that.

11 Now, as to Count 2, which is a violation of 192(b), a
12 felony, involuntary manslaughter of Edward Cavness, I'm
13 sentencing you to one-third the midterm on that charge of one
14 year. It's doubled again for a strike prior, the 136.1(a)22 I
15 referenced a moment ago. And that's consecutive as well as to
16 the sentence on Count 1.

17 In addition, I am sentencing you to an additional five years
18 pursuant to 667(a), and that's again with regard to the same
19 charge, that's (a)1, to the same charge of the dissuading a
20 witness conviction suffered in May of 1999 in the Superior
21 Court, County of San Francisco.

22 And then I'm also sentencing you to a consecutive term of
23 one year for having suffered a prior conviction for which you
24 served a term of imprisonment, and that is with regard to a
25 felony 273.5(a) conviction, which was suffered on the 12th day
26 of April 2006 in the Superior Court of California for the County
27 of San Francisco.

28 And then with regard to Count 4, the violation of Section



A3

1 11350(a) of the Health & Safety Code, that's possession of a
2 controlled substance, and in that case it was of cocaine base.
3 I am going to sentence you to the aggravated term of three
4 years. However, I'm going to stay that sentence. That will be
5 not imposed at this time. It will be stayed.

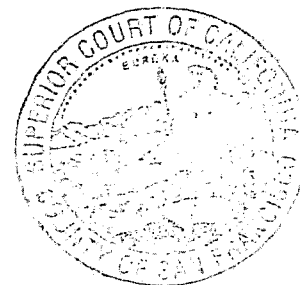
6 And with regard to the misdemeanor charge --

7 **MR. GAINES:** Your Honor, Count 3, the jury found the lesser
8 included of Count 3 pursuant to Section 240, the misdemeanor.

9 **THE COURT:** That is correct. The 240 lesser included charge
10 on Count 3, I'm sentencing you on that to six months in the
11 County jail, and I'm actually going to stay that term as well.
12 All right.

13 Now, also with regard to each, on Counts 1, 2 and 3, I am
14 going to impose a Restitution Fine of \$180 on each count. That
15 will not be stayed as to Count 4, and a 100-dollar Restitution
16 Fine on the misdemeanor count, a 30-dollar Critical Needs
17 Assessment on each count, and a 135-dollar booking fee and \$150
18 for preparation of the pre-sentence report.

19 Now, in addition, I want to give you both your parole rights
20 as well as your appeal rights. So at the expiration of your
21 period of incarceration, you will be placed on parole for a
22 period not to exceeds 48 months, unless that is waived for good
23 cause by the Board of Prison Terms. If you violate any
24 provision of your parole grant, your parole may be revoked, and
25 you could be incarcerated for a period not to exceed 12 months
26 in each instance of revocation, except as provided by Penal Code
27 Section 3057(c). That applies to any acts of misconduct that
28 are committed while you are a parolee confined in a prison



1 setting. And if you commit any offenses in that prison setting,
2 that's an exemption to that. Now, the total time spent in
3 custody due to a revocation of parole and the limit of parole
4 itself cannot exceed 48 months.

5 And in addition, I want to read you your appeal rights, sir.

6 You do have the right to appeal from the judgment of this
7 Court, and if you wish to appeal, you must file a written notice
8 of your intention to appeal with the Clerk of the Court within
9 60 days from today. And that notice must be in writing and
10 signed by you or your attorney, and it must specify what you are
11 appealing from, whether it is the whole judgment or just part of
12 the judgment.

13 You do have a right to a transcript of the proceedings, and
14 it is provided to you without any cost. So now, if you do not
15 have the financial ability to retain the services of an attorney

16 to represent you on appeal, the appellate authorities will
17 appoint counsel to represent you, but it is your obligation to
18 keep them posted and advised of your address so that they can
19 contact you and advise you of the appointment of counsel.

20 All right. Anything else, counsel?

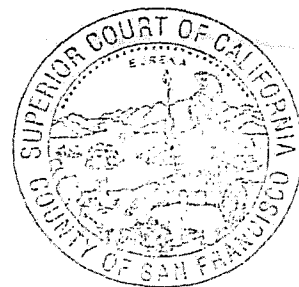
21 **MR. GAINES:** Your Honor, I'm not sure if the Court mentioned
22 the credit for time served.

23 **THE COURT:** Oh, I'm sorry. Thank you. I was so busy,
24 worried about the other.

25 **MR. GAINES:** We need that.

26 **THE COURT:** We do need that. That's a very important thing.

27 So Mr. Cavness, you do have credit for time served of 2,899
28 days. Because of the nature of the offense, you're entitled to



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1 only 15 percent credit, good time credits on that, which is an
2 additional 435 days, which is for a total of 3,334 days.

3 Anything further?

4 MR. ULLOM: No, your Honor.

5 THE COURT: All right. Mr. Cavness, good luck to you, sir.

6 THE DEFENDANT: Thank you.

7 THE COURT: Take care.

PROCEEDINGS CONCLUDED

I WAS TAKEN OUT THE COURT ROOM

8 (Pause in the proceedings.)

9 THE COURT: Let's go back on the record in the Cavness
10 matter. The Court forgot to impose the originally imposed
11 Restitution Fine, which was previously agreed upon by counsel
12 and the Court in an amount of \$20,934.20 to the Victim
13 Compensation Board. And I do notice here that there was a
14 40-dollar Court Operations Assessment, so I will assess that on
15 each count as well.

16 THE CLERK: Thank you.

17 (Proceedings concluded.)

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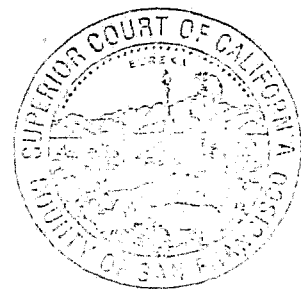
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AG

1 State of California)
2 City and County of San Francisco)
3
4

5 I, Melanie Dawn Gheno, Official Court Reporter for the
6 Superior Court of the State of California, City and County of
7 San Francisco, do hereby certify:

8 That I was present at the time of the above proceedings;

9 That I took down in machine shorthand notes all proceedings
10 had and testimony given;

11 That I thereafter transcribed said shorthand notes with the
12 aid of a computer;

13 ~~That the above and foregoing is a full, true, and correct~~
14 transcription of said shorthand notes, and a full, true and
15 correct transcript of all proceedings had and testimony taken;

16 That I am not a party to the action or related to a party
17 or counsel;

18 That I have no financial or other interest in the outcome
19 of the action.

20

21

22 Dated: March 13, 2017

23

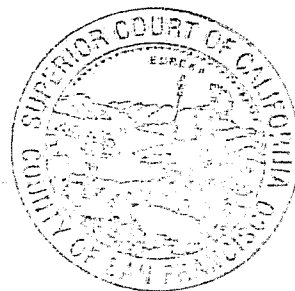
24

25 Melanie Dawn Gheno, CSR No. 7489, RMR, CRR

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27

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FELONY ABSTRACT OF JUDGMENT—DETERMINATE
(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

FILE 1
San Francisco County Superior Court

CR-290

MAR 20 2017
CLERK OF THE COURT
By: *[Signature]* Copy 6

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: SAN FRANCISCO		AN5878	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: MICHAEL CAVNESS	DOB: 12-23-1960	02413057	-A
AKA:	211241		-B
CH NO.: A07101015			-C
BOOKING NO.: 376279	<input type="checkbox"/> NOT PRESENT		-D
FELONY ABSTRACT OF JUDGMENT <input checked="" type="checkbox"/> PRISON COMMITMENT <input type="checkbox"/> COUNTY JAIL COMMITMENT		<input checked="" type="checkbox"/> AMENDED ABSTRACT	
DATE OF HEARING 03-10-17	DEPT. NO. S27	JUDGE LORETTA M. GIORGI	
CLERK ANNETTE TOUSSAINT	REPORTER MELANIE GHENO	PROBATION NO. OR PROBATION OFFICER 376279	<input type="checkbox"/> IMMEDIATE SENTENCING
COUNSEL FOR PEOPLE JOHN ULLOM		COUNSEL FOR DEFENDANT MICHAEL GAINES <input checked="" type="checkbox"/> APPOINTED	

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment

_____ (number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YR.)	CONVICTED BY			TERM (L, M, U)	CONCURRENT	CONSECUTIVE TO VIOLENT	CONSECUTIVE TO NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (REFER TO ITEM 5)	64 DAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA								YRS.	MO.
001	PC	245(A)1	adw/gbi force/oth than firear	2009	08 / 14 / 12	X			U							8Y	0M
002	PC	192(B)	involuntary manslaughter	2009	01 / 20 / 17			X	M		X					2Y	0M
004	HS	11350(a)	possession of controlled sub	2009	08 / 14 / 12	X			U	X					X	-	-
					/ /												
					/ /												
					/ /												

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

COUNT	ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	TOTAL
001	PC 12022.7(a)	3Y					3Y 0M

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	ENHANCEMENT	TIME IMPOSED OR "S" FOR STAYED	TOTAL
667(a)(1)	5Y					5Y 0M
667.5(b)	1Y					1Y 0M

4. Defendant sentenced ☐ to prison commitment per PC 1170(a), 1170(h)(3), or 1170.1(a) ☐ to county jail per PC 1170(h)(1) or (2)
☒ per PC 667(b)-(f) or PC 1170.12 (strike prior)
☐ per PC 1170(a)(3). Pre-confinement credits equal or exceed time imposed. Defendant ordered to report to local parole office upon release.

5. INCOMPLETE SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:		
7. <input type="checkbox"/> Additional Indeterminate term (see CR-292).		
8. TOTAL TIME:	19Y	0M

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

Exhibit B1

CR-290

PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: MICHAEL CAVNESS			
02413057	-A	-B	-C
			-D

9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fines:

Case A: \$ 640 per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ 640 per PC 1202.45 suspended unless parole is revoked.
\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case B: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case C: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
\$ _____ per PC 1202.44 is now due, probation having been revoked.

Case D: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
\$ _____ per PC 1202.44 is now due, probation having been revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case B: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case C: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case D: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☐ Victim name(s), if known, and amount breakdown in item 13, below. ☐ *Victim name(s) in probation officer's report.

c. Fines:

Case A: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$50 Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. Court Security Fee: \$ 160 per PC 1465.8.e. Criminal Conviction Assessment: \$ 120 per GC 70373.10. TESTING: ☒ Compliance with PC 296 verified ☐ AIDS per PC 1202.1 ☐ other (specify): _____11. REGISTRATION REQUIREMENT: ☐ per (specify code section): _____12. ☐ MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows (specify total sentence, portion suspended, and amount to be served forthwith):

Total: _____ Suspended: _____ Served forthwith: _____

13. Other orders (specify): Not 1170(h) eligible; Pay \$20,934.20 to Victim Compensation Board; other victim restitution to be determined by Board of Prison; pr-\$135; bkfee-\$150; parole; appeal;

14. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post-sentence report to CDCR per 1203c.
Defendant's race/national origin: _____

15. EXECUTION OF SENTENCING IMPOSED

- a. ☐ at initial sentencing hearing
- b. ☒ at resentencing per decision on appeal
- c. ☐ after revocation of probation
- d. ☐ at resentencing per recall of commitment (PC 1170(d)).
- e. ☐ other (specify): _____

17. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to: ☒ the reception center designated by the director of the California Department of Corrections and Rehabilitation ☐ county jail ☐ other (specify): _____

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	3334	2899	435
B			
C			

Date Sentence Pronounced

10 2017

Time Served in Institution

DMH

CD

CJ

CJRC

CJRC

CJRC

CJRC

CJRC

CJRC

CJRC

CJRC

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE <i>Annette Tanssaint</i>	DATE 03-2017
--	-----------------

CR-290 (Rev. January 2, 2012)

FELONY ABSTRACT OF JUDGMENT—DETERMINATE

Page 2

B2

GIBSON DUNN

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DChen@gibsondunn.com

ATTORNEY-CLIENT COMMUNICATION
ATTORNEY-CLIENT PRIVILEGED

Client: 66604-00042

February 22, 2019

Mr. Michael Cavness
AN 5878
San Quentin State Prison
1 Main Street
San Quentin, CA 94964

Re: Cavness v. Mirkarimi, No. 14-cv-3403 (N.D. Cal.)

Dear Mr. Cavness,

Thank you for meeting with me, Rachel Brass, Neema Jalali, and Judge Corley last week. As we discussed, please find enclosed (1) a copy of the fully executed Settlement Agreement, the text of which we substantially walked through together, and (2) a copy of California Penal Code § 2085.8, the statute we discussed yesterday regarding compensatory awards going directly to restitution. Although the defense appears to have signed the agreement on February 13, we only received the final, executed copy of the Settlement Agreement on Wednesday.

As we agreed last week with Judge Corley present, even though we expect that your claims will be dismissed shortly in view of the parties' settlement, our firm will continue to represent you in *Cavness v. Mirkarimi*, 14-cv-3403 (N.D. Cal.), in connection with the settlement funds obtained from the City and County of San Francisco and the disbursement of those funds from the escrow account in which they will be temporarily kept pursuant to the settlement agreement, pending the outcome of your restitution challenge.

When you file papers concerning your challenge to restitution, please send me or Lee a copy of those papers so that we are kept current and so that we can keep the Court updated regarding the case. As a reminder, you have 60 days from the execution of the Settlement Agreement to bring your challenge to restitution, and our firm does not represent you in connection with your challenge to restitution. We are confirming with the City that they agree that February 13, 2019 is the execution date, but we recommend that you file no later than April 12, 2019 just to be sure.

DECLARATION OF SERVICE BY MAIL
BY PERSON IN STATE CUSTODY
(C.C.P. §§ 1013(A), 2015.5)

I, Michael Cavness, the undersigned, declare:

I am over the age of 18 years, and a party to this matter. I am a resident of SAN QUENTIN STATE PRISON, in the County of Marin, State of California. My Prison address is:

CDCR#: _____, CELL#: _____
SAN QUENTIN STATE PRISON
SAN QUENTIN, CA 94974

On, 3/10/19, I served the attached:

1) Petition for Writ of Habeas Corpus,

on the parties, at the addresses listed below, by placing true and correct copies thereof, enclosed in a sealed envelope (verified by prison staff) with postage fully prepaid, in a deposit box provided by San Quentin State Prison, for mailing in the United States Mail as per the regulations governing out-going Legal Mail.

1) Clerk of The Court
S.F. Superior Court, RM-101
850 Bryant Street
S.F., CA 94103

I declare under the penalty of perjury, under the laws of the State of California, that all the foregoing is true and correct.

Executed on 3-10-19, at San Quentin, State California.

Michael Cavness
Declarant